Supreme Court, U.S.
FILED

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In The

Supreme Court of the United States

October Term, 1997

FLOYD A. WRIGHT
Petitioner

vs.

UNITED STATES OF AMERICA
Respondent

On Petition For Writ Of Certiorari
To The United States Court of Appeals
For The Ninth Circuit

PETITION FOR WRIT OF CERTIORARI

FLOYD A. WRIGHT
Pro Se
1240 E. MAIN, SUITE 2
GRASS VALLEY, CA 95945
(916) 273-9501

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QUESTIONS PRESENTED

1. Is it proper judicial procedure for the court to determine whether jurisdiction exists.

2. Can Federal Courts acquire jurisdiction over income tax issues pertaining to those who live within and earn all income from within the fifty States?

3. Are the conclusions expressed in *JURISDICTION OVER FEDERAL AREAS WITHIN THE STATES* still valid?

4. Since appellant reserved the right to argue other issues after jurisdiction was decided, in his Brief to the Ninth Circuit, is this procedure available?

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JURISDICTION

Jurisdiction for this court, in this case, is provided by 28 U. S. C. 1254(1) and Rule 10.1(a), Rules of Supreme Court, per 1995 Edition of Federal Civil Judicial Procedure and Rules by West Pub. Co.

Date of order sought to be reviewed: June 14, 1996

Date of order concerning denial of rehearing: Nov. 4, 1996

Service has been made on the Solicitor General of United States per Rule 29.4(a).

A CONCISE STATMENT OF THE CASE

Appellant's jurisdictional challenge was ignored by:

1. Counsel for the United States,
2. Judge of the District Court,
3. Counsel for the United States pertaining to appeal &
4. The judges in the Ninth Circuit.

Basis used for jurisdiction in the court of first instance was 28 U. S. C. 1340 & 1345 together with 26 U. S. C. 7402 & 7403. Neither of these address the issue of legislative jurisdiction to impose the law being adjudicated.

CONCISE ARGUMENT RELIED ON (Rule (h))

The decision of the lower courts are in conflict with decisions of other United States Courts of Appeal & the Supreme Court on the same issue.

In addition, these lower court's rulings have caused a serious wrench in the established order of things and it calls for an exercise of this Court's supervisory power.

STATEMENT OF THE CASE

The case arose by the United States claiming gift deeds, executed a number of years ago by appellant were fraudulent. If this was true, the United States could seize property of appellant to apply against alleged income tax amounts claimed to be due.

The case was decided without benefit of a requested jury in the Sacramento District Court. This was accomplished via Summary Judgments in favor of the United States.

During the proceedings, appellant made a motion to dismiss for lack of jurisdiction. Appellant also filed a Petition For Review of IRS actions. (Docket #31, 7/25/94, See Appendix 6, hereafter refered to as App. with page No.) Both were denied.

After denial of lack of jurisdiction motion by the District Court, appellant filed his first appeal with the ninth Circuit (#94-16990), on Oct. 27, 1994 to argue jurisdiction. However, the Ninth Circuit, in error, dismissed the appeal. (See App. 1)

The final Order of the District Court was filed Nov. 6, 1995. (See App. 2) Appellant then filed a second appeal in the Ninth Circuit on Jan. 11, 1996, which was denied. (See App. 18 & 3) Appellant reserved the right to argue issues other than jurisdiction, at a later time, which was never challenged by appellee.

Appellant used the Federal Government's Publication entitled JURISDICTION OVER FEDERAL AREAS WITHIN THE STATES (Library of Congress Doc. INB/10 1/957/PT2) as an important basis of the appeal. The Ninth Circuit gave a laconic denial of the appeal, and ordered no publication. A Petition For Review, suggested en banc, was denied Per Doc. No. 95-17311. (See App. 5) Both District & Circuit

ignored the aforementioned government report. Neither court commented as to whether it was valid or invalid nor did the appeal court even discuss appellant's main issue---lack of jurisdiction.

However, this document, noted above, stated on page 46 of Part II: (See Apx. 17)

"The federal Government cannot, by unilateral action on its part, acquire legislative jurisdiction over any area within the exterior boundaries of a State."

This report was the result of no ordinary research effort. The Interdepartmental Committee For The Study of Jurisdiction Over Federal Areas Within The States (Hereafter referred to as Committee) spent in excess of two years debating and doing research before reaching the above conclusion. The two part report contains 600 pages of comments & nineteen pages of citations to support their conclusions. Appellant hereby includes this entire report in this request as though it was written out word for word.

This is an important federal question. The Ninth Circuit has entered a decision in conflict with the decision of the Committee (Supra), who wrote the report. The Ninth Circuit and District Court's decisions are contrary to those of other Courts of appeal, & the Supreme Court. Since the Ninth Circuit has departed from the accepted and usual course of judicial procedure, the Supreme Court's supervisory power is necessary to correct the error. The Ninth Circuit judges improperly ignored appellant's claim of lack of Legislative Jurisdiction on the part of Congress. This Committee decision indicates it is impossible for Congress to grant jurisdiction to the District Courts, unless the issue pertains to Article I, Section 8, Subsections 1 thru 17 of the U. S. Constitution. A being cannot give what it does not have. Therefore, it seems the Sacramento District Court and the Ninth Circuit could not acquire jurisdiction to adjudicate this case. Conclusion---the appellant should have been granted the decision.

ARGUMENT IN FAVOR OF GRANTING CERTIORARI

1. IS IT PROPER JUDICIAL PROCEDURE FOR THE COURT TO DETERMINE WHETHER JURISDICTION EXISTS?

This issue could be entitled CHAOS IN THE COURTS, if it were to be publicized in a magazine, because the courts in this case failed to make proper determination of jurisdiction.

The basis for the above statement is that if the procedure applied in the subject case is allowed to continue, chaos and judicial anarchy will be the result in the lower courts. However, the judges of this court can "nip it in the bud" by taking immediate action. It is an extremely important issue.

The rule of validating jurisdiction has been universally recognized by all the courts in both the United States and the fifty united States, since the adoption of our U. S. Constitution.

A very early judgment of this Supreme Court stated:

> "...any proceeding without the [jurisdictional] limits prescribed, is coram non judice, and its action a nullity. ... we must, therefore, inquire whether we can hear ... the matters in controversy..."
> The State of Rhode Island v. The State of Massachusetts 37 U. S. 657, 719. (1838)

An even earlier case of this court put the responsibility of determining jurisdiction on the shoulders of the judges of the courts, when it was stated:

> " The Court is the proper guardian of its own jurisdiction. ... and must, therefore, take care that it neither abandons a jurisdiction rightfully belonging to it, nor usurps that which does not." Maxfield's Lessee v. Levy, 4 U. S 308, 314 (1797)

In 1885 an important case came before this court for consideration. This court stated political jurisdiction had to be ceded to the Federal government in order to be exercised. It was stated therein:

> "Where lands are acquired without such consent, ... the possession of the United States, is simply that of an ordinary proprietor."
> Fort Levenworth R. R. v. Lowe, 114 U. S. 525, 531 (1885)

And in 1922 this court stated:

> "The Constitution simply gives to the inferior courts the capacity to take jurisdiction in the enumerated cases, but it requires an act of Congress, to confer it. [quoting] The Mayor v. Cooper, 6 Wall 247, 252"
> Kline v. Burke Const. Co. 260 U. S. 226, 234

But there has been no act of Congress concerning the subject of the courts adjudicating cases of legislative jurisdiction, probably because Congress realizes they do not have jurisdiction to give.

Similar language was used in the case of Liberty Oil Co. v. Condon Bank, 260 U. S.. 226, 234.

This Court repeated their holding again with the comment:

> "An appellate federal court must satisfy itself not only of its own jurisdiction, but also of that of the lower courts in a cause under review."
> Mitchell Insurance Commissioner of California v. Maurer et al, 293 U. S. 237, 244

Another important comment:

> "If any tribunal finds absence of proof of Jurisdiction over person and subject matter, the case must be dismissed."
> Louisville RR v. Motley, 211 U. S. 149

But the Ninth Circuit did not follow this rule. The judges there just ignored the challenge to jurisdiction.

The jurisdictional issue was commented on by this Court in 1935 and the answer was:

> "The authority which the statute vests in the court to enforce the limitations of its jurisdiction precludes the idea that jurisdiction may be maintained by mere averment or that the party asserting jurisdiction may be relieved of his burden by any formal procedure. If his allegations of jurisdictional facts are challenged the court may still insist that the jurisdictional facts be established or the case be dismissed, and for that purpose the court may demand that the party alleging jurisdiction justify his allegations by a preponderance of evidence.. We think that only in this way may the practice of the District Courts be harmonized with the true intent of the statute which clothes them with adequate authority and imposes upon them a correlative duty."
> McNutt v. General Motors Acpt. Corp., 298 U. S. 178, 189

This McNutt case seems to be the precedent, for it is cited in many other cases.

Insofar as enforcing mandatory income tax statutes on the people living in Nevada County, California, the United States is an ordinary proprietor, unless the individuals earn their income from within the United States, consisting of the District of Columbia, the possessions, territories and enclaves. And Congress has no authority to grant jurisdiction to the federal courts to adjudicate cases concerning the imposition of a mandatory income tax on Nevada County (Or any other county) residents, unless their income arises in the United States (Proper noun).

The Ninth Circuit commented on this limitation a few years ago and quoted U. S. v. Spelar; 338 U. S. 222:

"...in the absence of an indication to the contrary, legislation is intended to apply 'only within the territorial jurisdiction of the United States' ".
Ola Belle Meredith v. United States, 330 F 2d 9, 11

The ninth Circuit commented again in 1983 as follows:

"The general rule is that "legislation of Congress, unless a contrary intent appears, is meant to apply only within the territorial jurisdiction of the United States."
McKeel v. Islamic Republic of Iran,722 F 2d 582, 589

Regarding the subject case, it seems the Sacramento Federal District Court & the Ninth Circuit have abandoned the principle of verifying the existence of jurisdiction. Is this proper? Appellant can find no basis for such disregard, therefore he concludes it is improper.

Counsel for the United States, in the original complaint, cited 28 U. S. C. 1340 & 1345 together with 26 U. S. C. 7402 & 7403 as the basis for jurisdiction. Appellant agrees that this would be appropriate for cases of persons who earned income or lived within the District of Columbia, the territories, possessions or enclaves of the United States. But appellant is not such a person. Counsel did not address the challenge made by appellant concerning the lack of legislative jurisdiction by Congress to pass an obligatory statute concerning Cognovit type income tax confessions which apply to the residents of the united (adjective) States who earned no funds from within the United States (proper noun). Neither did the judges in the District Court or the Ninth Circuit address this issue. Appeal brief excerpt to Ninth Circuit can be found in Apx. .

Therefore, the long recognized judicial rule concerning jurisdiction was abandoned. The counsel for the United States, the judges in the District Court and the Ninth Circuit all ignored this long standing rule in this case. It is vital that this court reinstate this proper rule of procedure.

2. CAN FEDERAL COURTS ACQUIRE JURISDICTION OVER INCOME TAX ISSUES PERTAINING TO THOSE WHO LIVE WITHIN AND EARN ALL INCOME FROM WITHIN THE FIFTY UNITED STATES?

There are two reasons why the answer to this question is---NO!

First, Congress does not have the jurisdiction to grant to the federal courts. This fact was demonstrated by the large Committee (Supra) who met for a period in excess of two years and concluded the legislative jurisdiction did not exist, unless the State had ceded it to the Federal Government.

On April 27, 1956, Attorney General, Herbert Brownell, Jr. sent a Letter of Transmittal to President Eisenhower (See Apx. 16) concerning this report. He stated that Part I of the report entitled, "Jurisdiction Over Federal Areas Within The States" (Library of Congress document INB/10 l/957/PT2) was ready for presentation to Congress.

The opening remarks of his letter were:

"On my recommendation, and with your approval, there was organized on December 15, 1954, an interdepartmental committee to study problems related to Federally owned property within the States.

This committee has labored diligently during the ensuing period and now has produced a factual report (part I), together with recommendations for changes in Federal agency practices, and in Federal and State laws, designed to eliminate existing problems arising out of Federal-State jurisdictional situations."

Later when Part II was finished, the committee stated that the Federal government had to have jurisdiction ceded to it by the State before any legislation would apply to the residents in the State. A quote supporting this statement was made supra (Part II, page 46).

Second, the 1040 form, being required by the I. R. S. is, likely, a Cognovit confession, which was one of the intolerable and immoral burdens our founders had escaped from in leaving England. A Cognovit confession is defined as:

"Defendant has confessed judgment and justice of claim. ... Written authority of debtor and his direction for entry of Judgment against him"
Black's Law Dictionary, Rev. Fourth Ed., page 325, 326

This is more fully described in the following questions presented.

2. (b) CAN CONGRESS GRANT JURISDICTION TO THE FEDERAL COURTS CONCERNING STATUTES WHICH FORCE TAXPAYERS TO EXECUTE A COGNOVIT NOTE (1040 FORM)?

Appellant is of the opinion the answer to this question is almost self evident and is---No.

A 1040 form is probably a Cognovit Note, Cognovit Judgment, Confession of Judgment and/or Confession in Debt, or would be, if it was really voluntarily executed.

An extrajudicial cogovit agreement or confession in debt is a legal instrument that is created voluntarily by one' s personal hand or under a Power of Attorney. It confesses and knowingly acknowledges or admits a debt due another. In effect, when one executes such a document, there is no need for judicial inquiry. And if judicial jurisdiction is invoked, it is generally to enforce payments. See Bank of Columbia v. Okely (1819) 17 U. S. 235, 244

The1040 form derives its efficacy from being personally acknowledged, signed under penalties of perjury and delivered to the United States or an agency thereof. And by force of statute(s), such as 26 U. S. C. 7203, becomes a legal Matter of Record.

However, there is a huge problem with this system. The 1040 form is effective only because it is supported by threat of incarceration (26 U. S. C. 7203). And individuals who enforce such a statute are probably guilty of fraud. For proof of this statement, one only need to consult Black's Law Dictionary, Rev. Fourth Ed. There, on page 369, we find the following:

> "No confession induced by official threat of prosecution is voluntary." {Quoting} Cannan v. United States, 19 F 2d 823, 824. Also referencing State v. Dolan, 90 A 1034, 1035 and People v. Vinci, 120 N. E. 193, 195.

In the People v. Vinci case (Supra) this statement was made:

"Generally speaking, a confession is regarded as voluntary when it proceeds from the spontaneous expressions of the mind, free from influence of any extraneous, disturbing cause. It is a confession made of the free will and accord of the defendant, without fear or any threat of harm or without promise or inducement by hope of reward."

But, the Commissioners of Internal Revenue have for many years explained to the public that filing is "voluntary". Then if an individual does not "volunteer" they subject the individual to the penalties of Section 7203. This is certainly a 'threat of harm'. It seems a gigantic fraud is being imposed upon the citizens of the united (Adjective) States.

This type of confession by tax form, removes the necessity of an in invitum action, wherein the Secretary would necessarily bare the burden of proof. The only party with any right, under this system, is the Secretary. And he can lay claim to additional amounts. See 4 Harvard Law Review 115, 116.

Under Canon Law many of the Ecclesiastical Courts were known as 'Star Chambers' wherein mandatory confessions were the rule. See, Faretta v. California (1975) 422 U. S. 806, 821, 822.

Our country's founders left this sort of inhuman activity back in England. But insofar as the IRS is concerned, the cognovit confession (1040 form) is mandatory and supported by threat of 26 USC 7203. See the Black's Law Dictionary cite. (Supra)

The filing of a 1040 form is induced by the threat of being charged with 26 U. S. C. 7203, which states "Any person ...who willfully fails to pay such ... tax shall be guilty of a misdemeanor..."

Since the founders of our country desired to eliminate the Star Chamber judiciary system, we can assume Congress does not desire to reinstitute such a custom. And it follows, it is impossible for Congress to grant jurisdiction to the District Courts to adjudicate violations of Cognovit judgment statutes. Again, you cannot give what you do not have. If Congress did make such a grant, it would be fraudulent.

Since Judges are presumed to know all of the above, it seems to appellant that the Ninth Circuit should have declared the District Court judgment as being a judgment void on its face.

2(c). DOES CONGRESS HAVE THE LEGISLATIVE AUTHORITY TO PASS STATUTES AND CONFER JURISDICTION ONTO THE FEDERAL COURTS CONCERNING OBLIGATORY INCOME TAX STATUTES?

There is also a twofold answer to this question.

The answer is probably yes, if one is speaking of the United States (proper noun), consisting of the District of Columbia, the territories, possessions and enclaves. This authority is provided by Article I, Section 8, Clause 17 of the U. S. Constitution. Appellant has never challenged this authority.

However, if one is speaking of the united (adjective) States, the answer is no. And this is emphatically commented on by the Committee. This committee wrote up the report entitled Jurisdiction Over Federal Areas Within The States (Supra). The

committee consisted of twenty nine, or more, legal people from various departments of the Federal government and the Attorney Generals from the forty eight states. One of the committee's conclusions (necessity of State ceding Jurisdiction.)was quoted from its report. (Supra).

There are many more important comments by this committee. As an example consider the following:

> "The Constitution gives express recognition to but one means of Federal acquisition of legislative jurisdiction---by State consent under article I, section 8, clause 17. The debates in the Constitutional Convention and State ratifying conventions leave little doubt that both the opponents and proponents of Federal exercise of exclusive legislative jurisdiction over the seat of government were of the view that a constitutional provision such as clause 17 was essential if the Federal Government was to have such jurisdiction. ... it is reasonable to assume that it was the general view that a special constitutional provision was essential to enable the United States to acquire exclusive legislative jurisdiction over any area."
> Jurisdiction Over Federal Areas Within The States, Part II, Page 41

This statement indicates the Federal Government would have had no jurisdiction whatsoever, if Art. I, Sec. 8, Subsection 17 had not been included in the Constitution.

Please note the use of the phrase "over any area" used by the committee. This would certainly include Nevada County, California. Also please note that appellant has been unable to find any ceding of legislative jurisdiction to the Federal government by the State of California. Therefore, he concludes it does not exist.

In Chapter III, of Part II, of the above referenced Committee report, the Committee explains in detail the requirements of how the Federal government can acquire legislative jurisdiction. And in

no instance does this discussion conclude jurisdiction is in some way automatic.

This report is primarily concerned with property owned by the United States. However, it follows, as night follows the day, that if the acquisition of legislative jurisdiction is so restricted by cession requirements by the States etc, concerning property federally owned, then the requirements are doubly applicable to lands the Federal government does not own.

Therefore, we must conclude Congress does not have the legislative jurisdiction to impose mandatory statutes on folks who live within and earn all income from within the fifty united States. Once more, a being cannot give what it does not have. So, it follows Congress cannot pass along the jurisdiction to adjudicate cases concerning mandatory statutes pertaining to an income tax that is applied to those folks living within and earning all income from within the fifty States. And appellant is an individual in this category.

3. ARE THE CONCLUSIONS EXPRESSED IN "*JURISDICTION OVER FEDERAL AREAS WITHIN THE STATES*" STILL VALID?

Appellant opened the prior section of this discussion by saying Congress "probably" had legislative authority over the United States. This qualifying word was used because it is doubtful that Congress has any authority whatsoever to pass a statute making mandatory the filing of a probable cognovit note or judgment. Congress and the I. R. S. have managed to get folks to voluntarily file such documents (1040 forms) and thereby probably waiving all due process rights, including any argument over notice, service of process, hearing, pleading and answer, discovery and/or judicial determination of the debt. An Appeals Court of the State of California has already ruled that such action is invalid. See Isabell v. County of Sonoma, 21 Cal 3d 61

Part II of the Committee report was completed June of 1957. Since that date there have been a number of instances in which the courts have indicated the rule of determining proper jurisdiction is still a vital & necessary one.

A recent and startling case was adjudicated in the District Court, Eastern District of Wisconsin. This case was known as United States v. George L. Wilson et al., No 94-CR-140. One of the defendants, Mr. Robert C. Braun, chose to argue the fact that the Federal Congress never had the jurisdiction to pass the statute Mr. Braun was accused of violating. He stated because of this truth, the court lacked the jurisdiction to adjudicate the case.

The District Court Judge ruled in favor of Mr. Braun and reversed the convictions of five other defendants in the case, who had been found guilty. The judge used the commerce clause of the Constitution as the basis of his ruling. (He avoided ruling on the Legislative jurisdiction issue, just as was done in the subject case .) He stated that it was carrying the commerce clause to extremes to claim the law was a valid use of Congressional power. This case was reversed in a two to one decision of the Appeals Court. Judge Coffey, Circuit Judge, wrote a powerful dissent. This Appeals Court also failed to rule on Mr. Braun's claim (Per the Committee's report conclusion, supra) that legislative jurisdiction was lacking. See U. S. v. Wilson 73 F. 3d 675

Mr. Braun had filed a Motion For Determination of Status, in the District Court, which included declarations, by Mr. Braun, stating the site of the alleged criminal act was not a Federal Enclave but rather private property. He also stated that the site was not subject to partial, exclusive or to any other extent Federal Legislative Jurisdiction. And that in the absence of Federal Legislative Jurisdiction over the location, it followed the Court lacked jurisdiction to adjudicate the matters alleged in the complaint.

Appellant, in the subject case, alleges the same claims as listed above and therefore, the District Court and the Ninth Circuit lacked

jurisdiction to adjudicate the subject case. Appellant alleges the Federal Government lacks jurisdiction to pass statutes imposing a mandatory income tax (Cognovit note) on those folks living within and earning all funds from within Nevada County, California or any County of the other forty nine united States. Appellant lives and earns all income from within the fifty united States. Therefore, the jurisdictional issue is extremely important to appellant.

In 1995 another important case was adjudicated by this court on the Jurisdictional issue. In this case too, it was ruled that Congress had no jurisdiction (remote cause) to pass a gun control law such as Mr. Lopez was charged with violating. The proximate cause of the decision was the commerce clause of the U. S. Constitution. See U. S. v. Alfonso Lopez, 115 S. Ct. 1624

Appellant cannot recognize any connection between the Mandatory Statutes in Title 26 and the commerce clause of the Constitution. However, he is of the opinion that the lack of Congressional jurisdiction to impose such statutes is almost self evident, due to the 1040 Form probably being a Cognovit note, and this lack is certainly supported by the Committee's report spoken of supra.

In 1977 we find the following comment:

"Jurisdiction is essentially the authority conferred by Congress to decide a given type of case one way or the other. [quoting] Hagans v. Lavine, 415 U. S. 528, 538"
Southpark Sq. Ltd. v. City of Jackson, Miss. 565 F 2d 338, 341

In the same year (1977) this court stated:

"It is a fundamental precept that federal courts are of limited jurisdiction. The limits upon federal jurisdiction, whether imposed by the Constitution or by Congress, must be neither disregarded nor evaded."
Owen Equipment & Erection Co. v. Kroger 437 U. S. 365, 374

In 1979 the comment was made:

"...the district court may properly look beyond the jurisdictional allegations of the complaint and view whatever evidence has been submitted on the issue to determine whether in fact subject matter jurisdiction exists. ... In cases where the jurisdiction of the court is challenged as a factual matter, the party invoking jurisdiction has the burden of supporting the allegations of jurisdictional facts by competent proof." (Citations omitted)
Grafon Corp. v. Hausermann 602 F 2d 781,783

However, in the subject case, neither the District Court, the Ninth Circuit, nor counsel for the United States ever recognized the jurisdiction challenge by appellant.

In 1980 a similar comment was made.

"The burden of proving the facts necessary to sustain jurisdiction is on the plaintiff." (Citations omitted)
Escude Cruz v. Ortho Pharm Corp. 619 F 2d 902, 904

In 1981 the Fifth Circuit stated:

"A federal court's inquiry into its own jurisdiction ... has been aptly characterized ... as 'the first principle of federal jurisdiction'. ... In fact [t]his question the court is bound to ask and answer for itself, even when not otherwise suggested." (Many citations omitted)
Pettinelli v. Danzig 644 F 2d 1160. 1161

In 1982 we find:

"...it is incumbent upon the party seeking to avail himself of federal court jurisdiction to demonstrate the existence of jurisdiction."
Fountain v. Metro Atlanta Rapid Trans Aut. 678 F 2d 1038, 1041

In 1993 the issue was worded in this way:

"On every writ of error or appeal, the first and fundamental question is that of jurisdiction, first of this court, and then of the court from which the record comes." (Quoting Mansfield C. & I. M. Ry. Co v. Swan 111 U. S. 379, 382)
Casey v. Lewis 4 F 3d 1516, 1519

This court made a similar comment (1934) in Mitchell v. Maurer 293 U. S. 237, 244 and also quoted Mansfield, C & I. M. Ry Co. v. Swan (Supra).

In 1995 the Ninth Circuit, quoting Kokkonen v. Guardian Life Ins. Co. 114 S. Ct. 1673, 1675 stated:

"It is to be presumed that a cause lies outside this limited jurisdiction, and the burden of establishing the contrary rests upon the party asserting jurisdiction."
In Re Hunter, 66 F 3d 1002, 1005

But when appellant went to the Ninth Circuit a year later he had different judges and received contrary results.

Finally, when one checks the 1996 Supplement of Federal Practice & Procedure by Wright, Miller & Cooper, dozens of cases supporting these views will be found. Therefore, the different view imposed upon appellant evidently was that of three judges and not the entire Ninth Circuit panel.

Appellant can find no opinions that contradict the Committee's report. Therefore, he concludes this report is still a valid analysis of the Federal Legislative jurisdiction issue. And appellant further concludes the subject case should be reversed and dismissed with prejudice. Appellant requests this court to do so.

4. SINCE APPELLANT RESERVED THE RIGHT TO ARGUE OTHER ISSUES AFTER THE JURISDICTION ISSUE WAS DECIDED, IS THIS PROCEDURE AVAILABLE?

Appellant stated in his Brief For Appellant to the Ninth Circuit (Page 2---Apx. 19) that he desired, if there should be a need, to reserve his rights to appeal other issues in the case after this (jurisdiction) appeal is decided.

Since neither counsel for the United States nor the Ninth Circuit Court challenged or commented on this request, appellant is of the opinion this right is still available. And he hereby requests that this be officially approved by this court, should there be a need.

JUDGEMENT

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

(Filed
May 15, 1995)

NO. 94-16990
CT/AG#: CV-94-01183-EJG

UNITED STATES OF AMERICA
Plaintiff - Appellee

v.

FLOYD WRIGHT
Defendant - Appellant

APPEAL FROM the United States District Court for the Eastern District of California (Sacramento).

ON CONSIDERATION WHEREOF, it is now here ordered and adjudged by this Court, that the appeal in this cause be, and hereby is dismissed for lack of jurisdiction.

Filed and entered February 21, 1995

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

JUDGMENT IN A CIVIL CASE

(Filed
Nov. 6, 1995)

CASE NUMBER: CIV S-94-1183 EJG

UNITED STATES OF AMERICA

v.

FLOYD A. WRIGHT, et al

XX - - Decision by the Court. This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

IT IS ORDERED AND ADJUDGED

THAT JUDGMENT IS HEREBY ENTERED IN ACCORDANCE WITH THE COURT'S ORDER OF NOVEMBER 6, 1995.

ENTERED: November 6, 1995

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

(Filed June 14, 1996)

No. 95-17311
D.C. No. CV-94-01183-EJG

MEMORANDUM*

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

FLOYD WRIGHT,
Defendant-Appellant

Appeal from the United States District Court for the Eastern District of California
Edward J. Garcia, District Judge, Presiding

Submitted June 11, 1996**

Before: CANBY, NOONAN, and LEAVY, Circuit Judges.

Floyd Wright appeals pro se the district court's summary judgment in favor of the United States in the government's action pursuant to 26 U.S. C. § 7402 (a) and 7403 to reduce to judgment federal income tax assessments made against Wright for the years 1973 through 1975 and 1985 through 1989, to set aside as fraudulent certain conveyances of real property owned by Wright, and to foreclose federal tax liens against that property.

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* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R, 36-3.

** This panel unanimously finds this case suitable for decision without oral argument. Fed. R. App. P. 34 (a); 9th cir. R. 34-4.

Wright does not allege error in any of the district court's rulings on the merits. Rather, Wright's assignments of error rest on his contention that the district court lacked jurisdiction over the action because the taxing authority of the United Stated does not extend to individuals residing within any of the fifty states. The district court properly rejected Wright's frivolous contentions. See In re Becraft, 885 F. 2d 547, 548 (9th Cir. 1989); Carter v. Commissioner, 784 F. 2d 1006, 1009 (9th Cir. 1986).

AFFIRMED.

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

(Filed
Nov. 4, 1996)

No. 95-17311

D.C. No. CV-94-01183-EJG
Eastern California
(Sacramento)

ORDER

UNITED STATES OF AMERICA,
Plaintiff - Appellee,

v.

FLOYD WRIGHT,
Defendant - Appellant

Before: CANBY, NOONAN, and LEAVY, Circuit Judges.

The panel has voted to deny appellant's petition for rehearing and to reject the suggestion for rehearing en banc.

The full court has been advised of the suggestion for rehearing en banc and no active judge has requested a vote on whether to rehear the matter en banc. Fed. R. App. P. 35.

The petition for rehearing is denied and the suggestion for rehearing is denied and the suggestion for rehearing en banc is rejected.

FLOYD A. WRIGHT
1240 E. Main Street, Ste. 2
Grass Valley, CA 95945
(916) 273-9501

(Filed
Aug. 17, 1994)

Pro Se

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA *Plaintiff* v. FLOYD A. WRIGHT, et al, *Defendant*	CV-S 94-1183 EJG GGH Amended Per Local Rule 220 Motion To Dismiss For Lack Of Jurisdiction, & Petition For Judicial Review Of Agency Actions (Per 5 USC 706)

_____/

COMES NOW THE DEFENDANT and alerts the court to the following:

This court is in a state of ABSOLUTE LACK OF JURISDICTION concerning this case and this contention will be proven with the following discussion.

A SYLLOGISTIC ARGUMENT

Major premise: The Federal Income Tax Law can apply to persons living within and earning all their income within the United States (meaning the fifty states) or the Unites States (meaning the District of Columbia, the possessions, territories and enclaves) or both, for Congress has been given the authority to legislate for both.

Minor premise: But the Federal Income Tax Law does not apply to persons living within and earning all their income from within the fifty states.

Conclusion: The Federal Income Tax Law does not apply to defendant, who is and has been living within and earning all of his income from within one or more of the fifty states.

Proof of major premise: A check of the U.S. Constitution reveals that Congress was granted the power (limited) to legislate for the fifty states (see Art. I, Sec. 8, Paragraphs 1 thru 16; U.S. Const.). And Congress was granted the power (unlimited) to legislate for the District of Columbia et al (see Art. I, sec. 8, paragraph 17 & 18; U.S. Const.). This idea was supported by the Supreme Court early in our history, when they stated:

> "The laws of Congress in respect to those matters outside of constitutionally delegated powers do not extend into the territorial limits of the states, but have force only in the District of Columbia, and other places that are within the exclusive jurisdiction of the National government." Caha v. U.S.; 152 U.S. 211

More recently the Supreme Court stated;

> "It is a well established principle of law that all federal legislation applies only within the territorial jurisdiction of the United States unless a contrary intent appears." Foley Brothers, Inc. v. Filardo; 336 U.S. 281 (1948)

The above cited sections of the U.S. Constitution and the court cases prove that the Congress can legislate for both entities, but in a limited fashion for the fifty states.

Proof of minor premise: Defendant has already proven (via Notice to Take Judicial Notice, filed 7/1594) that persons in the fifty states who earn all their income within the fifty states and live within one of the fifty states are not affected by the Federal Income Tax (see that document for additional proof). Besides, if the Federal Income Tax Law was a mandatory law, it would be unconstitutional, insofar as the persons in the fifty states are concerned, due to the lack of equality or apportionment of the tax.

Conclusion: The Federal Income Tax Law does not apply to defendant, who is and has been living within and earning all of his income from within one or more of the fifty states.

SYLLOGISM #2

Major premise: The only way persons living within and earning all their income from within the fifty states can become liable for Federal Income Tax is to voluntarily assess themselves a certain amount of tax.

Minor premise: Defendant did not voluntarily assess himself for, any tax, for any of the years listed in this complaint.

Conclusion: Defendant is not liable for Federal Income Tax.

Proof of major premise: Syllogism #1 proved the Federal Law did not cause any person, who lived within and earned all their income from within one or more of the fifty states, to become liable. Therefore, it is evident there has to be a voluntary act on the part of persons, in order to become liable.

This type of action by those wishing to volunteer has been verified by the comments of IRS Commissioners over many years. A sampling of their comments follow;

> "The American system of self assessment and voluntary payment ... To extend voluntary compliance... Continuing the Service's emphasis on voluntary compliance..."
> — 1964 Annual Report by Mortimer Caplin

> "The American tax system, founded on the democratic principle of self-assessment would likely create insoluble problems in voluntary compliance..."
> — 1970 Annual Report by Randolf Thrower

> "...simpler tax forms and instructions are of great importance in achieving a high level of voluntary compliance with our tax laws."
> — 1979 Annual Report by Jerome Kurtz

> "Thank you for making this nation's tax system the most effective system of voluntary compliance in the world."
> — '93 1040 Forms & Inst. (bklet) , M. Richardson, pg. 3

Proof of minor premise: An examination of the forms and documents used by the defendant will reveal he did not volunteer.

Conclusion: Defendant did not become liable for the Federal Income Tax, by volunteering to pay a certain amount.

SYLLOGISM #3

Major premise: The Secretary of Treasury has the statutory right to asses individuals, who fail to self assess themselves, if they have been found liable for taxes.

Minor premise: But, defendant was not found liable for any tax.

Conclusion: The Secretary of Treasury (or agents) did not have statutory right to assess the defendant any tax and it follows the assessments are null and void from the beginning.

Proof of major premise: The Internal Revenue Code in Sec. 6201 (a) allows the Secretary to assess taxes "...which have not been duly paid by stamp at the-time and in the manner provided by law." Evidently, this applies to BATF, because stamps are not used in the collection of income tax. Defendant cannot find any section allowing the assessment of those who have volunteered for the payment of income tax. Even if there is such a statute, the assessment must be against those persons who are liable and not against those who are not liable. A Federal Appeals Court discussed this some time ago.

> "The revenue laws are a code or system in regulation of tax assessments and collection. They relate to taxpayers, and not to nontaxpayers. The latter are without their scope. No procedure is prescribe for nontaxpayers, and no attempt is made to annul any of their rights and remedies in due course of law. With them Congress does not assume to deal, and they are neither the subject nor the object of the revenue laws..." Economy Heating v. U.S.; 470 F 2d 585 (1972). For additional information see Long v. Rasmussen; 218 F 2,236 and Gerth v. U.S. 132 F. Supp. 894 (1955).

The assessment permission is primarily for the collection of taxes administered by the BATF. A check of the Code of Federal Regulations will confirm this.

Proof of minor premise: Defendant did not deal in alcohol, tobacco or firearms during the years in question and those are the types of taxes allowed to be assessed by IRC 6201 (a). Even if there is some hidden Sec. that allows the assessment of income tax, it would not apply to defendant because defendant has proven he is not liable for such a tax.

Conclusion: The Secretary (nor agents) cannot assess defendant, due to absence of liability.

SYLLOGISM #4

Major premise: For an assessment to be valid it must have resulted from a strict compliance with procedural rules.

Minor premise: The assessments of the defendant did not strictly follow the procedural rules.

Conclusion: The assessments of defendant are invalid.

Proof of major premise: For many years the Federal courts have enunciated this obligation. A few references follow:

> "An executive agency must be rigorously held to the standards by which it professes its action to be judged. See Securities & Exchange Comm'n v. Chenery Corp., 318 U.S. 80, 87-88. Accordingly if dismissal from [1] is based on a defined procedure, even though generous beyond the requirements that bind such agency, that procedure must be scrupulously observed. See Service v. Dulles, 354 U.S. 363. This judicially evolved rule of administrative law is now firmly established and , if I may add, rightly so. He that takes the procedural sword shall perish with that sword."
>
> Vitarelli v. Seaton 359 U.S. 534, 546 & 547

[1] employment

In another case, an IRS agent withheld information when asked and the court commented as follows,

> "We cannot condone this shocking conduct by the IRS. Our revenue system is based upon the good faith of the taxpayers and the taxpayers should be able to expect the same from the government in its enforcement and collection activities[9]. (Note 9) During oral argument, counsel for the government stated that these procedures were "routine." If that is the case we hope our message is clear. This sort of deception will not be tolerated and if this is the "routine" it should be corrected immediately."
>
> U.S. v. Twell 550 Fed. 2d 297, 300 (1977)

The IRS personnel did not pay any attention. They have been carrying on similar methods of procedure against defendant for a number of years.

> "The Service, with its broad authority including that of levying property, has power that is considerable, and in some ways unique, to disrupt taxpayers' lives. The needs of the public fisc are vital, but their mere invocation cannot override all rights of the public for whom it exists, without reference to the propriety of that invocation. With the IRS' broad power must come a concomitant responsibility to exercise it within the confines of the law. The Court has emphasized that no official is above the law, and that broad powers present broad opportunities for abuse. ...the taxpayer must be liable for the tax. Id. Tax liability is a condition precedent to the demand. Merely demanding payment, even repeatedly, does not cause liability."
>
> Bothke v. Floor Engineers and Constructors, Inc.; 713 F 2d 1405, 1413 & 1414.

Proof of minor premise: The IRS agents have been noticed (P.L. 90-620 Oct. 22, 1968) of a Treasury function (Fed. Register Vol. 39, No 62 3.29.74, Sec. 1111.1 Mission) which states, "The mission of the service ... includes communicating the requirements of the law to the public,

...." However, the IRS agents who have dealt with defendant have been deliberately silent when asked some of "the requirements of the law."

Defendant requested copies of any findings of fact and conclusions of law which would support their presumption that defendant was liable for the income tax. None were forthcoming. The only type of replies received were in essence that it was their policy not to answer inquiries on a point by point basis because it only led to additional questions.

Defendant questioned Commissioners, Regional Director, Dist. Dir. and various agents but all had the same type of attitude—silence.

According to the Bothke case, above, "Tax liability is a condition precedent to the demand." But IRS agents only presume liability, rather than make a determination; or, if they do, they keep it a deep, dark secret.

Since defendant proved in Syllogism #1 that the income tax applies to District of Columbia et al, the agents would have found defendant not liable because he was not a resident of any of those areas and was alien to the government of District of Columbia. All the agent had to do is read Treasury publication 519, in order to make this discovery. The agents of the IRS indicate they do not know anything about the law, so it is probably impossible for them to communicate the requirements of the law to the public.

The Plaintiff filed this case on the basis of assessments being made against defendant because of "Income Type of Tax" (see page 5 of the Complaint). But there was no assessment made on the basis of an income tax. The assessments were made on the basis of a 6702 type of tax and a 1040 type of tax. Congress has never passed any tax entitled 1040 tax. Therefore, this case should be dismissed because, this court has no jurisdiction to adjudicate a 1040 tax assessment.

When the alleged 6702 type of tax assessments were made, defendant made a request for proof that it was correct on the basis of IRC 6703 which states--in subsection (a): "Burden of proof—In any proceeding involving the issue of whether or not any person is liable for a penalty under section 6700, 6701 or 6702, the burden of proof with respect to such issue shall be on the Secretary." Yet, when the request for proof was made, there was only silence. No comment of any type was made. Another case of the IRS <u>not</u> following procedural rules, but "procedure must be <u>scrupulously</u> observed." (Vitarelli, Supra) Underlining emphasis is defendant's.

Defendant, under the FOIA, requested copies of any Warrant of Distraint and was informed that there were no such documents in existence. But the Federal courts have stated this is a necessary procedure. A few of the cases suggesting this procedure follow.

> "...and the collector, after demand, may levy, or by warrant may authorize a deputy collector to levy, upon all property and rights to property belonging to such person..."
> Thirty-Ninth Congress, Sess. I, Ch. 184 1866, page 107

> "In our time, distraint, together with a power of sale, has been made available to the Collector of Internal Revenue as a sanction for securing payment of taxes which persons liable have refused or neglected to pay."
> Raffaele v. Granger, 196 F 2d 620, 623

But defendant did not admit liability and, in fact, challenged it. But no proof of liability was ever offered by the agents applying the sanctions.

> "The method followed in the cases is that of issuing warrants of distraint, making the bank a party, and serving with the notice of levy copy of warrants of distraint and notice of lien." Cf. Commonwealth Bank v. U.S. 115 F 2d 327; United States v. Bank of United States 5 F. Supp.
> United States v. O'Dell, 160 F 2d 304, 307

> "...I am constrained to conclude that a levy upon both tangible and intangible property under Sec. 3692 requires the execution of a warrant of distraint and then effective only to the amounts affixed thereon. As noted above, the Court of appeals for this Circuit declared when this matter was before it that Secs. 3690-3697 "require that a levy by a deputy collector be accompanied by warrants of distraint." (221 F 2d 642) The warrant for distraint itself recites on its face that it shall be the "warrant," i.e., authority for the Deputy Collector to execute it "in the amount or amounts named above."
> Freeman v. Mayer, 152 Fed. Supp. 383, 387

> "...an agent of the Collector, acting under the authority of certain warrants of distraint issued by the Collector..."
> Brinker Supply Company v. Dougherty, 134 F. Supp. 384, 385

All of the cases cited show that the proper procedure, according to the rules is for the collector to issue warrants of distraint before an agent seizes something owned by an, alleged, delinquent. This procedure was not followed in dealing with the defendant.

Conclusion: The assessments of defendant are invalid.

SUMMARY

Defendant has offered syllogisms that indicate (1) the tax does not apply to him; (2) he is not liable for the tax; (3) the IRS assessments are null & void and (4) a second indicating the assessments are invalid.

Unless the plaintiff can find an error in either the major or minor premise of all four syllogisms, another conclusion is forced onto the reader. The IRS finds itself in the position noted by the judge, "He that takes the procedural sword shall perish with that sword." And the only solution for this case is dismissal.

Defendant respectfully calls attention a second time, the court is in a state of ABSOLUTE LACK OF JURISDICTION. Therefore, it should dismiss this case, for lack of subject matter jurisdiction.

Defendant demands that this case be dismissed and,

1. The return of all property, or the value thereof, if impossible to return, seized from defendant,

2. Interest on the value of property seized, from date of seizure to settlement date, at the rate currently charged delinquent taxpayers, by the Internal Revenue Service, and

3. Since this is the second time the United States of America has brought frivolous and fraudulent charges against defendant, causing him aggravation, mental stress, worry, interference with personal life, libel & slander

inflicted against him by these actions, the award of punitive damages in the amount of one hundred fifty thousand dollars.

In addition, should the court take some other type of action, defendant demands that the court undertake a Judicial Review of the Agency (IRS) Actions and Procedures, as called for in 5 U.S. C. 706.

Such a review is necessary to determine answers to the questions the defendant posed over a number of years that went unanswered. This review should determine, but not be limited to (1) determining how the IRS agents determine whether a person is liable or not, prior to billing for tax; (2) what is the basis for assessment of a person, who lives and earns all income within one or more of the fifty states and who does not volunteer to voluntarily assess himself/herself; (3) whether there is another IRC Sec. allowing assessment, other than 6201 (a), for those dealing in alcohol, tobacco and firearms; (4) why IRS agents, almost universally, ignore the Federal Register command (Vol. 39, No. 62 3/29/74) to communicate the requirements of the law to the public and (5) why the IRS ignores the courts' statements that warrants of distraint are necessary, prior to seizure.

Dated: Aug. 15, 1994

"s/ Floyd A. Wright"—Defendant

LETTER OF TRANSMITTAL

Office of the Attorney General,
Washington, D.C., April 27, 1956.

Dear Mr. President: On my recommendation, and with your approval, there was organized on December 15, 1954, and interdepartmental committee to study problems of jurisdiction related to federally owned property within the States.

This Committee has labored diligently during the ensuing period and now has produced a factual report (part I), together with recommendations for changes in Federal agency practices, and in Federal and State laws, designed to eliminate existing problems arising out of Federal-State jurisdictional situations.

Subject to your approval, I shall bring the report and recommendations to the attention of the President of the Senate and the Speaker of the House of Representatives for the purpose of bringing about consideration of the Federal legislative proposals involved to the attention of State officials through established channels for consideration of the State legislative proposals involved, and to the attention of heads of Federal departments and agencies, for their guidance in matters relating to this subject.

Part II of the Committee's report is now in course of preparation and will be completed in the next several months. It will be a text which well discuss the law applicable to Federal jurisdiction over land owned in the States. Immediately upon completion of the legal text it will be sent to you. The Committee is of the view, in which I concur, that the two parts of the report are sufficiently different in content and purpose that they may issue separately.

Respectfully,
Herbert Brownell, Jr.,
Attorney General

The President,
The White House

Necessity of State Assent to Transfer of Jurisdiction to Federal Government: Constitutional consent.—The Federal Government cannot, by unilateral action on its part, acquire legislative jurisdiction over any area within the exterior boundaries of a State. Article I, section 8, clause 17, of the Constitution, provides that legislative jurisdiction may be transferred pursuant to its terms only with the consent of the legislature of the State in which is located the area subject to the jurisdictional transfer.[4] As was indicated in chapter II, the consent requirement of article I, section 8, clause 17, was intended by the framers of the Constitution to preserve the States' jurisdictional integrity against Federal encroachment.

[3]Mason Co. v. Tax Comm'n, 302 U.S. 186 (1937); Springfield v. Kenney, 62 Ohio L. Abst. 123, 104 N. E. 2d 65 (1951); Renner v. Bennett, 21 Ohio St. 431 (1871); Ottinger Bros. v. Clark, 191 Okla. 488, 131 P. 2d 94 (1942); Beaufort County v. Jasper County, 220 S. C. 469, 68 S.E. 21d 421 (1951); State v. Shepard, 239 Wis. 345, 300 N.W. 905 (1941); 7 Ops. A.G. 571 (1855). See also chapters V, VI, VII, and IX, infra.

[4]See report, part I, p. 231. This constitutional provision relates only to the transfer of jurisdiction; the consent of the State is unnecessary to the acquisition of title to land within its boundaries by the United States. United States v. Mayor and Council of City of Hoboken, N.J., 29 F. 2d 932 (D. N.J., 1928); Op. A. G., Cal., no. LB 164/189 (Feb. 28, 1938); 38 Ops. A.G. 341 (1935). And the consent of the State is legally effective to transfer jurisdiction even though not given until after the purchase by the United States. Ex parte Hebard, 11 Fed. Cas. 1010, No,. 6312 (C.C. D. Kan., 1877); United States v. Tucker, 122 Fed. 518 (W. D. Ky., 1903); Steele v. Halligan, 229 Fed. 1011 (W.D. Wash., 1916); 13 Ops. A. G. 411 (1871); 15 Ops. A. G. 480 (1878); cf. St. Louis-San Francisco Ry. v. Satterfield, 27 F. 2d 586 (C. A. 8, 1928). No particular phraseology is necessary to express such consent. 39 Ops. A. G. 99 (1937); cf. McConnell v. Wilcox, 2 Ill. 344, 357 (1837). But a consent statute of general application will not be given retroactive effect. St. /Louis-San Francisco Ry. v. Satterfield, supra. The legislature of a State has unlimited power to transfer jurisdiction to the United States except as it may be restricted by State or Federal constitutions. United States v. Crary, 1 F. Supp. 406 (W. D. Va., 1932). Consent must be given by a State legislature, not by a constitutional convention. 12 Ops. A.G. 428 (1808).

(Appeal Brief to Ninth Circuit)

(Filed
Jan. 11, 1996)

STATEMENT OF THE CASE

A. NATURE OF THE CASE

This is an appeal from three orders of Judge Garcia of the United States District court (Sacramento) for the Eastern District of California. The last, disposing of all claims, was filed Nov. 16, 1995.

B. COURSE OF PROCEEDINGS

Because of the small of amount of money involved, this is, probably, a nuisance suit brought on by the Internal Revenue Service and filed May 5, 1995 in Fresno, California, by U.S. Dept. of Justice.

The Internal Revenue Service and the U.S. Justice department are attempting to have a twenty five year old deed and a twelve year old deed of real property declared as fraudulent. This so they can seize the property, sell it and grab the proceeds.

Judge Garcia has agreed with the plaintiff in three partial summary judgment motions that finally, allegedly, disposed of all the issues. During this period, Judge Garcia acted as jury by denying defendant/appellant a trial by jury of disputed facts.

In the first Memorandum of Decision issued by Judge Garcia, Oct. 25th, 1994, he denied defendant/appellant's Motion to Dismiss For Lack of Jurisdiction. (See page 5—Docket #76) this was done in spite of a Request For Judicial Notice made by defendant/appellant 7/15/94 (See Docket #20). This Request that Judicial Notice be taken was stricken by Judge Garcia as his first act upon being appointed presiding judge in the Sacramento Court. Defendant/appellant re-filed this item as a Demand Judicial Notice be taken on Oct. 25, 1995. (See Docket #s 38 and 77). The item for which Judicial Notice was called was the Report submitted by Attorney General, Herbert Brownell, Jr. to President Eisenhower, dated June 28, 1957 concerning jurisdiction and entitled, JURISDICTION OVER FEDERAL AREAS WITHIN THE STATES, Part II. Judge Garcia did not say one word about this important report.

Appellant/defendant filed an appeal on Oct. 27, 1994 in which the first item mentioned was, "Wright's motion to dismiss for lack of jurisdiction is denied." Appellant/defendant was of the opinion that jurisdiction could be argued or appealed at any time. However, this court (Ninth Circuit, #94-16990) ruled on Feb. 21, 1995 that "Appellee's motion to dismiss this appeal for lack of jurisdiction is granted." Since this issue of jurisdiction should have been decided prior to the end of the case now being appealed, appellant desires to reserve his rights to appeal other issues in the case after this appeal is decided, if there should be a need.

Appellant is of the opinion that the issue of jurisdiction should be decided first. If there is no jurisdiction, as appellant believes, it is a waste of everyone's time to consider various other issues which may make the case become a gross mistake.

EXCERPT FROM APPEAL BRIEF TO NINTH CIRCUIT

(Filed
Jan. 11, 1996)

5. LEGAL OPINION REGARDING THE EXTENT OF JURISDICTION

A study of jurisdiction over Federal areas within the States began in 1954 due to some Federal employees' children being denied admission to a public school. The first part was concluded and submitted in 1957. ...[as]

> JURISDICTION OVER FEDERAL AREAS WITHIN THE STATES, and subtitled, *Report of The Interdepartmental Committee For The Study of Jurisdiction Over Federal Areas Within The States, Part I, ...* (Library of Congress document INB/10 1/957/PT2).

What did this committee conclude and what information did they use to reach their conclusions, after about two and one half years of study? Some of this information will follow.

Probably the most important jurisdictional conclusion reached by this committee was voiced on page 46 of Part II, when they said:

> "The Federal Government cannot, by unilateral action on its part, acquire legislative jurisdiction over any area within the exterior boundaries of a State."

This conclusion certainly supports appellant's claim of "lack of legislative jurisdiction to impose the income tax on folks..." within the fifty United States.